NO. 46885-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

BRUCE BRATTON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
CLALLAM COUNTY, STATE OF WASHINGTON
Superior Court No. 14-1-00167-2

BRIEF OF RESPONDENT

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2. Whether Mr. Bratton waived his *Miranda* rights when, just prior to making statements to Dep. Pickrell, Mr. Bratton confirmed that he received *Miranda* warnings, understood, and remembered them?
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II. STATEMENT OF THE CASE

A. TESTIMONY AT CrR 3.5 HEARING

Jefferson County Sergeant Mark Apeland testified at the CrR 3.5 hearing that around 9:40 p.m. on May 21, 2014, he arrested Mr. Bratton at Mr. Bratton's residence in Jefferson County to be transported to Clallam County. RP 11–13 (Sept. 30, 2014). Sgt. Apeland advised Mr. Bratton of his *Miranda* rights by reciting them directly from his Washington State Criminal Justice Training Commission Miranda Warnings card. RP 7 (Sept. 30, 2014). Sgt. Apeland read the warnings from the card out loud for the record:

> You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right at this time to talk to a lawyer and have him present with you while you're being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before questioning if you wish. You can decide at anytime to exercise these rights and not answer any questions or make any statements.

RP 7–8 (Sept. 30, 2014).

Sgt. Apeland testified that when he began reading the *Miranda* warnings, Mr. Bratton interrupted and tried to talk about his arrest and that he knew what it was about. RP 8 (Sept. 30, 2014). Sgt. Apeland told Mr. Bratton to hold on so that he could read the *Miranda* warnings to him and then he finished reading the warnings to Mr. Bratton. RP 8–9 (Sept. 30, 2014). The final statement Sgt. Apeland read to Mr. Bratton was, "You can decide at anytime to exercise these rights and not answer any questions or make any statements." RP 8 (Sept. 30, 2014).

When Sgt. Apeland finished, he asked Mr. Bratton if he understood the rights. RP 8, 9, 13–14 (Sept. 30, 2014). Mr. Bratton acknowledged he understood and started talking about the bag dropped at the casino. RP 8, 9 (Sept. 30, 2014). Sgt. Apeland testified that he did not intend to interrogate Mr. Bratton about the case. RP 9 (Sept. 30, 2014).

Sgt. Apeland turned Mr. Bratton over to Deputy Przygocki for transport to Clallam County where Mr. Bratton was to be released to a Clallam County Deputy. RP 12–13 (Sept. 30, 2014). Sgt. Apeland testified

that about 5 minutes had passed between the time he arrested Mr. Bratton and the time transport began. RP 13 (Sept. 30, 2014).

During this time, Detective Brett Anglin arrived and was about to provide Mr. Bratton with *Miranda* warnings but Sgt. Apeland advised Det. Anglin that he had already provided Mr. Bratton with *Miranda* warnings. RP 24 (Sept. 30, 2014). Det. Anglin asked Mr. Bratton if he wanted to talk about what happened and Mr. Bratton told him he already knew about the incident. RP 18, 19, 24 (Sept. 30, 2014). Det. Anglin asked Mr. Bratton if he was at the casino and Mr. Bratton admitted to Det. Anglin he was at the casino and was aware of the situation because he received a call shortly after he left. RP 19, 22 (Sept. 30, 2014).

During the CrR 3.5 hearing, Clallam County Sheriff's Deputy Pickrell testified that on May 21, 2014, Mr. Bratton was turned over to Dep. Pickrell at the Jefferson County line within about an hour after Mr. Bratton was arrested. RP 23 (Sept. 29, 2014).

Dep. Pickrell questioned Mr. Bratton about the whether the methamphetamine was for personal use (RP 117 (Sept. 30, 2014)) but did not provide Mr. Bratton with his *Miranda* warnings because he was told that the warnings were already provided. RP 8, 12 (Sept. 29, 2014). However, Dep. Pickrell did ask Mr. Bratton if he had been advised of his rights, whether he understood the rights, and whether he remembered the rights. RP 9 (Sept. 29,

2014). Mr. Bratton answered in the positive to all three questions. RP 9 (Sept. 29, 2014). Defense counsel cross examined Dep. Pickrell during the CrR 3.5 hearing and Dep. Pickrell, again, testified as follows: "I asked Mr. Bratton if he remembered his *Miranda* rights and he said he did." RP 16 (Sept. 29, 2014); *see also* RP 118 (Sept. 30, 2014).

Then, as Mr. Bratton was getting into Dep. Pickrell's patrol vehicle, Dep. Pickrell asked Mr. Bratton whether the methamphetamine that fell out of his pocket at the casino was for personal use or for dealing. RP 17, 18 (Sept. 29, 2014). Mr. Bratton replied that it was for personal use and that he was not dealing. RP 18 (Sept. 29, 2014).

After the conclusion of testimony, the trial court made oral findings of fact and conclusions of law on the CrR 3.5 hearing which were entered in writing on May 20, 2015. RP 32–34 (Sept. 30, 2014), CP 85–87.

B. TESTIMONY AT TRIAL

Mr. Bratton testified that when Det. Anglin was speaking with him, he knew his *Miranda* rights and chose to speak with Det. Anglin. RP 181–82, (Sept. 30, 2014). Mr. Bratton also testified that he was transported and then met Deputy Pickrell at the county line about a half hour after he was advised of *Miranda* rights. RP 182 (Sept. 30, 2014). Mr. Bratton still understood his rights to remain silent and to ask for an attorney and still chose to talk with Dep. Pickrell. RP 183 (Sept. 30, 2014).

At trial Dep. Pickrell testified that on May 21, 2014, Mr. Bratton was turned over to Dep. Pickrell at the Jefferson County line. RP 116 (Sept. 30, 2014). Dep. Pickrell testified that he was told Mr. Bratton was already advised of his *Miranda* warnings. RP 116 (Sept. 30, 2014). Prior to questioning Mr. Bratton about the whether the methamphetamine was for personal use, Dep. Pickrell asked Mr. Bratton if he remembered his rights and Mr. Bratton replied that he did. RP 116 (Sept. 30, 2014). Then Mr. Bratton also replied that it was for personal use and that he is not dealing. RP 117 (Sept. 30, 2014).

The baggie of white powdery substance

Dana Keeling testified on Sept. 30, 2014, RP 51–59.

Dana Keeling, was working as an assistant slot supervisor at Seven Cedars Casino on May 13, 2014 from 3 p.m. to 1 a.m. (RP 52, 54) and found a baggie of white stuff (RP 55) identified in a photo marked as State's Ex. 5 leaning on the floor next to a circle of machines. RP 55, 56. Keeling called security and turned the baggie identified in State's Ex. 5 over to Michael Stringer. RP 56, 58.

Michael Stringer testified on Sept. 30, 2014, RP 60–69.

On May 13, 2014, Michael Stringer was working the 4 p.m. to 2 a.m. shift as a Customer Service Officer (CSO). RP 61–62. Dana Keeling got his attention and called Stringer over to bank 52. RP 62. The slot machine row

is called a "bank". RP 62. Keeling removed her foot revealing a baggie. RP 63. Mr. Stringer called surveillance for a camera. RP 63. The baggie was identified by Mr. Stringer in the photo marked as State's Exhibit 5. RP 63. The baggie was taken and placed on the security podium. RP 64. This was recorded by surveillance at about 10:35 p.m. RP 66. The baggie was turned over to Tribal Gaming Agent Larry Graham. RP 69.

Larry Graham testified on Sept. 30, 2014. RP 69–76.

Tribal Gaming Agent Larry Graham was working on May 13, 2014 at the Seven Cedars Casino from 5 p.m. to 3 a.m. RP 71. Graham identified the baggie in State's Ex. 5 as the baggie he saw recovered by Keeling which was placed on the security podium at about 10:30 p.m. RP 71, 72. Graham took the baggie and locked it up in a double bin locker that only Tribal Gaming Agents have access to and which is used to store evidence until it can be turned over to the sheriff's department. RP 72. Then Graham watched the video surveillance of bank 52 where the baggie was recovered. RP 74. Graham observed an individual sitting at a slot machine and what appeared to be a small baggie drop from his left front pants pocket onto the ground. RP 74.

Tribal Gaming Agent Jim Dahl testified on Sept. 30, 2014. RP 76–83.

Dahl identified the baggie in court and testified that he provided the baggie to Dep. Pickrell. RP 78. Dahl identified State's Ex. 3 and 4 as photos

of surveillance and of the suspect leaving the casino. RP 80, 82.

Detective Bret Anglin testified on Sept. 30, 2014, RP 85–97.

Det. Anglin identified the individual depicted in State's Ex. 3 and 4 as Mr. Bruce Bratton and identified Mr. Bratton in court as well. RP 87. Det. Anglin was present when Mr. Bratton was arrested at his residence on May 21, 2014. RP 88. Det. Anglin testified that he asked Mr. Bratton if he knew why he was arrested. RP 89, Sept 30, 2014. Mr. Bratton told Det. Anglin that he did know and that he had received a phone call about what had occurred at the casino. RP 89, Sept 30, 2014. Det. Anglin then asked Mr. Bratton about the amount of methamphetamine and at that point Mr. Bratton advised Det. Anglin that he was a user of methamphetamine. RP 89, Sept 30, 2014.

On cross examination, Det. Anglin testified that Mr. Bratton also told Det. Anglin he knew why he was being arrested and it had to do with something that happened at the casino. RP 92. When Det. Anglin asked Mr. Bratton whether he might be selling or delivering methamphetamine, Mr. Bratton answered, "I don't deal, I'm just a user." RP 93.

Deputy Jeff Pickrell testified on Sept. 30, 2014, RP 97–142.

Dep. Pickrell identified State's Ex. 6 in court as the surveillance video where Mr. Bratton looses the "found property". RP 101. State's Ex. 6 was admitted into evidence and played for the jury. RP 103–104. Dep. Pickrell

also identified State's Ex. 3 and 4 as still photos of the surveillance video from the casino showing Mr. Bratton walking out of the casino. RP 104–105. Dep. Pickrell identified State's Ex. 5 as a still photo of the video from the casino showing the bag with the white powdery substance in it. RP 105.

The time of the photo of the baggie with methamphetamine labeled as State's Ex. 5 was 10:34 p.m. on May 13, 2014. RP 105. The time of the photos of Mr. Bratton leaving the casino labeled as State's Ex. 3 and 4 was 10:36 p.m. on May 13, 2014. RP 105. State's Ex. 3, 4, and 5 were admitted in evidence. RP 106. The actual baggie with white powdery substance found by Keeling and identified in State's Ex. 5 was marked as State's Ex. 7 and admitted in evidence. RP 107.

Dep. Pickrell testified that the State's Ex. 7 was sent to the State Crime Laboratory for testing. RP 107

Daniel Van Wyk testified on Sept. 30, 2014, RP 152–165.

Daniel Van Wyk was a forensic scientist at the Washington State Patrol Crime Laboratory in Marysville. RP 152. Van Wyk tested the substance contained in State's Ex. 7 and was qualified as an expert to in the testing of controlled substances. RP 154, 155. Van Wyk determined through forensic testing that the substance in State's Ex. 7 contains methamphetamine. RP 160.

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Mr. Bratton testified on Sept. 30, 2014, RP 166–188.

Mr. Bratton confirmed that he was at the Seven Cedars Casino playing at a slot machine around 9:00 p.m. on May 13, 2014. RP 166–67. Mr. Bratton confirmed that he is the individual depicted in State's Ex. 3 and 4 leaving the casino at about 10:36 p.m. RP 167. Mr. Bratton confirmed that he was the individual in the surveillance video which was played in court and identified as State's Ex. 6. RP 167. Although Mr. Bratton testified that he did not have methamphetamine with him at the time, Mr. Bratton testified that he told Dep. Pickrell that "if I did drop some meth there or something, a bag there or something, it would've been for personal use." RP 177.

Mr. Bratton also testified that he viewed the video marked as State's Ex. 6 and did not see anything drop from his pocket. RP 168. State's Ex. 6 was played for the jury in court. RP 103, 104, 167. Mr. Bratton testified that the white thing sticking out of his pocket shown in the video was the liner of his pocket. RP 185. On May 13, 2014, Mr. Bratton was wearing similar tan Carhartt bib overalls at the casino and wore the same brand of bib overalls at trial. RP 168. Mr. Bratton raised his arm so the jury could see his pocket and testified that his pocket shows when wearing the overalls and when seated. RP 188. When the casino called to inform Mr. Bratton of the video and the supposed bag of meth at the casino, Mr. Bratton asked if it tested positive. RP 187.

III. ARGUMENT

A. THE STATEMENTS ARE ADMISSIBLE BECAUSE MR. BRATTON WAIVED HIS *MIRANDA* RIGHTS.

"'[The] court must determine de novo whether the trial court 'derived proper conclusions of law' from its findings of fact.'" *State v. Grogan*, 147 Wn. App. 511, 516, 195 P.3d 1017, 1020-21 (2008) *review granted, cause remanded*, 168 Wn.2d 1039, 234 P.3d 169 (2010) (quoting *State v. Solomon*, 114 Wn. App. 781, 789, 60 P.3d 1215 (2002)).

> We hold that the rule to be applied in confession cases is that findings of fact entered following a CrR 3.5 hearing will be verities on appeal if unchallenged; and, if challenged, they are verities if supported by substantial evidence in the record. Consequently, when reviewing a trial court's conclusion of voluntariness, an appellate court determines "'whether there is substantial evidence in the record from which the trial court could have found that the confession was voluntary by a preponderance of the evidence.'"

State v. Rafay, 168 Wn. App. 734, 757–58, 285 P.3d 83 (2012) (citing *State v. Broadaway*, 133 Wn.2d 118, 129, 942 P.2d 363 (1997)); *see also State v. Elkins*, No. 44968-4-II, 2015 WL 3759299, at *4 (Wn. Ct. App. June 16, 2015).

"'Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding.'" *Grogan*, 147 Wn. App. at 516 (quoting *State v. Solomon*, 114 Wn. App. at 789).

Here, Mr. Bratton has not assigned error to the trial court's findings of

fact on the CrR 3.5 hearing. Furthermore, the findings are supported by substantial evidence. All findings were directly based on testimony by Sgt. Sgt. Apeland, Det. Anglin, and Dep. Pickrell. There was no evidence casting doubt upon their credibility. The testimony of all three was consistent.

Therefore, the findings of the trial court are verities on appeal.

1. **Mr. Bratton's *Miranda* warnings are valid and his statements admissible because he in fact waived his rights by responding freely.**

Mr. Bratton asserts that the *Miranda* warnings provided to him by Sergeant Apeland were not sufficient because, although Sgt. Apeland advised Mr. Bratton of his rights, he did not ask Mr. Bratton if he wished to waive those rights. Mr. Bratton cites no authority which supports this argument. *Miranda* requires that the warnings be given, not that an officer provides the warnings and then asks the defendant whether he or she wishes to waive the rights. The question of whether one validly waived their *Miranda* rights is a different question.

Mr. Bratton cites *Fare v. Michael C.* where the Court stated that the question of whether one waives *Miranda* rights is not one of form, but rather whether the defendant *in fact* waived the rights. 442 U.S. 707, 724, 99 S. Ct. 2560, 61 L. Ed. 2d 197 (1979) (quoting *North Carolina v. Butler*, 441 U.S. 369, 373, 9 S. Ct. 1755, 60 L. Ed. 2d 286 (1979) (emphasis added); *see* Appellant Br. at 6. However, Mr. Bratton is arguing the opposite—that

failure to ask if Mr. Bratton wished to waive invalidates any waiver in fact.

"The right to remain silent may be waived if the State proves by a preponderance of the evidence the waiver was knowing, voluntary, and an intelligent relinquishment of a known right." *State v. Wheeler*, 108 Wn.2d 230, 237–38, 737 P.2d 1005 (1987) (citing *State v. Robtoy*, 98 Wn.2d 30, 36, 653 P.2d 284 (1982)). "A waiver of a *Miranda* right need not be explicit but may be inferred from particular facts and circumstances." *Id.* at 238 (citing *North Carolina v. Butler*, 441 U.S. 369, 373, 99 S.Ct. 1755, 1757, 60 L.Ed.2d 286 (1979)).

Here, the statements at issue were those Mr. Bratton made to Deputy Jeff Pickrell, Detective Brett Anglin, and Sergeant Apeland regarding the suspected methamphetamine which appeared on casino video surveillance to have fallen out of Mr. Bratton's pocket. The trial court's findings of fact on the CrR 3.5 hearing are sufficient to support the conclusion that Mr. Bratton's statements were voluntary and made with full knowledge of *Miranda* rights:

> 5. Sgt. Apeland gave the defendant his full rights under *Miranda*.
>
> 6. The defendant indicated that he understood his *Miranda* rights and then began to immediately, without any prompting, to talk about the baggie at the casino.
>
> 8. The statements the defendant made to Sgt. Apeland were with full understanding of his *Miranda* rights.
>
> 9. Detective Anglin appeared within two or three minutes of the arrest.

10. Det. Anglin was advised by Sgt. Apeland that Sgt. Apeland had provided Mr. Bratton with his *Miranda* rights.

11. Det. Anglin asked Mr. Bratton, "Do you want to talk to me about what happened?"

12. Det. Anglin's question to Mr. Bratton was very clear [i.e.] "do you want to talk about it" and the defendant began to talk about what happened; it was a very short conversation.

1. All of the law enforcement officers that testified indicated that Mr. Bratton was cooperative, he indicated that he understood his rights, he didn't seem confused, he was not under the influence of any intoxicants as far as they could tell at that time and these observations applied during the period of time from his arrest to his eventual transport to Clallam County.

13. There was no coercion or threats of any kind during the entire episode that took place at the defendant's residence where he was arrested.

14. Within an hour's time, probably less, from Quilcene to the border of Clallam County, the transport took place and Deputy Pickrell encountered the defendant at the borderline and Pickrell was advised that *Miranda* rights had been given to Mr. Bratton.

15. Dep. Pickrell specifically asked the defendant if he remembered and understood those rights and then Mr. Bratton began to speak to Dep. Pickrell about what happened.

16. This was a knowing conversation that Mr. Bratton engaged in.

CP 85–87.

Even in a situation where rights are initially invoked, they can be waived subsequently, "if [one] 'freely and selectively responds to police questioning after initially asserting *Miranda* rights.'" *State v. McReynolds*, 104 Wn. App. 560, 576, 17 P.3d 608 (2000) (quoting *Wheeler*, 108 Wn.2d at

238); *see also State v. Elkins*, at *5.

In this case, Mr. Bratton never invoked his rights, and the facts show he responded and conversed freely with Det. Anglin and Dep. Pickrell. Mr. Bratton spoke to Sgt. Apeland without any prompting. The trial court's findings of fact clearly establish that Mr. Bratton waived his right to remain silent because he had full knowledge of his *Miranda* rights when he voluntarily spoke with Sgt. Apeland, Det. Anglin, and Dep. Pickrell.

Therefore, this court should affirm the admissibility of Mr. Bratton's statements.

2. *Miranda* warnings were not invalidated by a time lapse because Mr. Bratton had full knowledge of his rights when he responded to Deputy Pickrell.

"'Where a defendant has been adequately and effectively warned of his constitutional rights, it is unnecessary to give repeated recitations of such warnings prior to the taking of each separate in-custody statement.'" *State v. Gilcrist*, 91 Wn.2d 603, 607, 590 P.2d 809 (1979) (quoting *State v. Vidal*, 82 Wn.2d 74, 78, 508 P.2d 158, 161 (1973); *State v. Rowe*, 77 Wn.2d 955, 959, 468 P.2d 1000 (1970)); *see also State v. Wurm*, 32 Wn. App. 258, 262, 647 P.2d 508 (1982) *aff'd sub nom. State ex rel. Juckett v. Evergreen Dist. Court, Snohomish Cnty.*, 100 Wn.2d 824, 675 P.2d 599 (1984).

Fresh warnings at every questioning are not required as long as the defendant has knowledge of his rights when questioned. *See Rowe*, 77

Wn.2d at 959. In *Rowe*, the Court found that because the defendant "[had] been informed of his rights three times and [ ] intelligently waived them, statements taken within the next 48 hours [could not] be said to have been made without knowledge of his rights." *Id.*

Here, Sgt. Apeland provided *Miranda* warnings to Mr. Bratton at approximately 9:40 p.m. to 10:15 p.m. According to Mr. Bratton, it was only a half hour later when, with full knowledge of his rights, he chose to converse with Dep. Pickrell. Dep. Pickrell also testified that Mr. Bratton re-acknowledged that he remembered and understood his rights prior to speaking with Dep. Pickrell. There was no sign of intoxication or mental impairment as Mr. Bratton appeared to be acting normal.

Therefore, the *Miranda* warnings were not invalidated by a half hour lapse of time and transferring Mr. Bratton's custody from one officer to another.

Mr. Bratton cites to *Missouri v. Seibert*, where the Court addressed "the technique of interrogating in successive, unwarned and warned phases. . . ." 542 U.S. 600, 609, 124 S. Ct. 2601, 2608, 159 L. Ed. 2d 643 (2004). The facts of *Seibert* are very different from the instant case:

> Officer Hanrahan testified that he made a "conscious decision" to withhold *Miranda* warnings, thus resorting to an interrogation technique he had been taught: question first, then give the warnings, and then repeat the question "until I get the answer that she's already provided once." App. 31–34. He acknowledged that Seibert's ultimate

> statement was "largely a repeat of information ... obtained" prior to the warning. Id., at 30."

Id. at 605–06.

In *Seibert*, the defendant never had the opportunity to consider the implications of discussing matters with law enforcement because statements were already obtained *before Miranda* warnings were given. *Seibert* does not apply to the instant case because here, unlike in *Seibert*, Mr. Bratton provided his statements *after* Sgt. Apeland provided *Miranda* warnings to Mr. Bratton. This was not a situation where *Miranda* warnings were inserted in the midst of coordinated and continuing interrogation.

Conclusion

The trial court's findings of fact clearly support the conclusion, by a preponderance of the evidence, that the Mr. Bratton's statements were voluntary, knowing, and intelligent. Furthermore, there is no authority which requires suppression of statements for not asking if one wishes to waive *Miranda* rights after they are given *Miranda* warnings. That is not the test. Rather, the evidence shows that Mr. Bratton in fact waived his right to remain silent when conversing with Sgt. Apeland, Det. Anglin, and Dep. Pickrell. *Wheeler*, 108 Wn.2d at 237–38.

Furthermore, the lapse of time between the *Miranda* warnings and Mr. Bratton's statements to Dep. Pickrell did not invalidate the *Miranda*

warnings because Mr. Bratton re-acknowledged that he remembered and understood his rights just prior to responding to Dep. Pickrell. *See Rowe*, 77 Wn.2d at 959.

Therefore, the Court should affirm the trial court's finding and conclusions that Mr. Bratton's statements were admissible at trial.

B. THE STATE PRESENTED SUFFICIENT EVIDENCE TO PROVE POSSESSION.

"The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn. 2d 192, 201, 829 P.2d 1068 (1992) (citing *State v. Green*, 94 Wn.2d 216, 220–22, 616 P.2d 628 (1980)).

"When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.* (citing *State v. Partin*, 88 Wn.2d 899, 906–07, 567 P.2d 1136 (1977)). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Id.* (citing *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980)).

"In determining whether the necessary quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a

reasonable doubt, but only that substantial evidence supports the State's case." *State v. Fiser*, 99 Wn. App. 714, 718–19, 995 P.2d 107 (2000) (citing *State v. Galisia*, 63 Wn. App. 833, 838, 822 P.2d 303 (1992)).

"Credibility determinations are for the trier of fact and are not subject to review." *Id.* at 719 (citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)).

Here, the State presented video surveillance showing Mr. Bratton at bank 52 in the casino where the methamphetamine was found. The video shows something white *falling* from Mr. Bratton's pocket at bank 52. The baggie which was found at bank 52 was confirmed to contain methamphetamine. Law enforcement identified the individual seen dropping the white object from his pocket as Mr. Bratton. Further, Mr. Bratton admitted to being at the casino and admitted that he was the individual in the surveillance showing a white object falling from his pocket.

Moreover, when Dep. Pickrell asked Mr. Bratton about the methamphetamine, Mr. Bratton responded that it was for personal use and that he was not dealing. RP 117. This is substantial evidence that Mr. Bratton possessed the methamphetamine.

Mr. Bratton provided conflicting testimony about what he told the officers and also claimed the white object in the video was simply his pocket lining. However, this does not explain what was found on the floor. The

testimony was that something white fell out of the pocket.

"This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *Id.* (citing *State v. Walton*, 64 Wn. App. 410, 415–16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011, 833 P.2d 386 (1992)). The jury was persuaded by the evidence provided.

Mr. Bratton also points out that Gaming Agent Larry Graham was not able to testify that the baggie containing methamphetamine admitted in evidence was the same baggie that fell from Mr. Bratton's pocket. *See* Appellant's Br. at 11. What Mr. Bratton fails to mention is that Mr. Graham is not the person who picked up the baggie from bank 52. Mr. Graham did not witness the baggie on the floor by bank 52 at all and did not see Mr. Stringer pick it up. For all Mr. Graham knew, the baggie could have been picked up anywhere and then left on the podium.

Therefore, Mr. Graham would not be in any position to testify that the baggie he took possession of at the podium is the same baggie that fell from Mr. Bratton's pocket at bank 52. Mr. Graham was but a middle part of the chain of custody of the baggie. The baggie was found by Ms. Keeling and she stayed by the baggie without touching it until Mr. Stringer came to retrieve it. RP 56–58. Mr. Stringer retrieved the baggie at bank 52 and put it on the security podium where Mr. Graham took possession of it. RP 62–64.

The baggie was seen falling from Mr. Bratton's pocket at bank 52. The baggie was retrieved and tested positive for methamphetamine. Therefore, when viewed in the light most favorable to the State, there is substantial evidence from which a rational juror could find beyond a reasonable doubt that Mr. Bratton possessed the methamphetamine.

The Court should affirm the conviction.

C. THE STATE PRESENTED SUFFICIENT EVIDENCE TO ESTABLISH CORPUS DELICTI.

> Washington law provides that a confession or admission may support a conviction only when the State produces independent evidence sufficient to establish the corpus delicti of the crime charged. *State v. Smith*, 115 Wash.2d 775, 780–81, 801 P.2d 975 (1990). Independent evidence is sufficient if it prima facie establishes the corpus delicti. *State v. Meyer*, 37 Wash.2d 759, 763–64, 226 P.2d 204 (1951). That is to say, the evidence need not establish the corpus delicti beyond a reasonable doubt or even by a preponderance of the evidence. *Meyer*, at 763, 226 P.2d 204.
>
> Rather, a prima facie showing simply requires evidence which supports a "logical and reasonable deduction" that the crime occurred. *State v. Riley*, 121 Wash.2d 22, 32, 846 P.2d 1365 (1993) (quoting *State v. Hamrick*, 19 Wash.App. 417, 419, 576 P.2d 912 (1978)).
>
> The reviewing court must assume the truth of the State's evidence and must draw all reasonable inferences in favor of the State. *State v. Neslund*, 50 Wash.App. 531, 544, 749 P.2d 725 (citing *Corbett*, 106 Wash.2d at 571, 723 P.2d 1135), *review denied*, 110 Wash.2d 1025 (1988).

State v. Solomon, 73 Wn. App. 724, 727, 870 P.2d 1019 (1994).

To establish corpus delicti for possession of a controlled substance,

one only need establish that someone committed the crime. *Id.* at 728. Here, a quantity of methamphetamine was collected off the floor of the casino. That somebody had possession of the methamphetamine and dropped it at the casino is a logical and reasonable deduction. Moreover, the surveillance showed the baggie fall from Mr. Bratton's pocket. The item was retrieved by Mr. Stringer, eventually turned over to Dep. Pickrell, and sent to the crime laboratory where it tested positive for methamphetamine.

Therefore, there was prima facie evidence establishing corpus delicti..

D. COUNSEL'S PERFORMANCE WAS ADEQUATE AND THE DEFENDANT WAS NOT PREJUDICED.

To prevail on a claim of ineffective assistance of counsel, Mr. Bratton has the burden to show, 1) that his trial counsel committed a serious error that fell below an objective standard of reasonableness, and 2) that the error resulted in prejudice because there was a reasonable probability that, but for the error, the outcome of the trial would have been different. *State v. Grier*, 171 Wn.2d 17, 32–34, 246 P.3d 1260 (2011).

Here, the State clearly provided sufficient evidence to establish corpus delicti. Therefore, Mr. Bratton has not established that defense counsel was unreasonable by not objecting to the admission of statements under the Corpus Delicti theory. Further, Mr. Bratton has not shown any prejudice due to any failure to object based on the corpus delicti doctrine.

IV. CONCLUSION

Mr. Bratton had full knowledge of his *Miranda* rights when he chose to speak with law enforcement about the baggie of methamphetamine found on the floor of the casino. Further, substantial evidence supports the trial court's findings that the statements were voluntary. Therefore, the trial court did not err in admitting the statements in evidence.

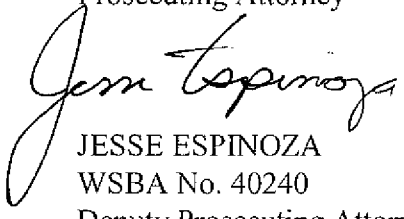
Furthermore, the State presented sufficient evidence to prove possession and establish corpus delicti for the crime of possession of a controlled substance. Consequently, defense counsel's performance was not unreasonable by not objecting to the admission of evidence on corpus delicit grounds.

For the foregoing reasons, Mr. Bratton's conviction should be affirmed.

Respectfully submitted this 25th day of June, 2015.

Respectfully submitted,

MARK B. NICHOLS
Prosecuting Attorney



JESSE ESPINOZA
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Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to Lise Ellner on June 25, 2015.

MARK B. NICHOLS, Prosecutor

Jesse Espinoza

DOCUMENT I

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